

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2143

2005 SENATE JUDICIARY

SB 2143

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2143

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 12, 2005

Tape Number	Side A	Side B	Meter #
1			3349 - End
Committee Clerk Signature <i>Maia L Solbey</i>			

Minutes: Relating to Uniform Commercial Code general provisions, contracts & leases..

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Rep. Klemin** Dist. #47 Introduced the bill (meter 3349) I am also a member of the Uniform Law Commission and serve on the National Commissions of State Laws. Read and Distributed Att. #1, This is to update Article 1 of the Uniform code. Att. #2. Submitted Att #3

Amendments-dealling with HB 2143. These pertain to a bill if it passes in the house. **Sen.**

**Traynor** questioned if they were substanative changes **Rep Klemin** responed no, most are not and he refer to hand out (att #1 2nd page). **Sen. Traynor** asked how many other states have adopted this. Rep. Klemin responded that he did not know.

**Testimony in Opposition of the Bill:**

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Senate Judiciary Committee

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**Maralyn Foss** - ND Bankers Asssoc. I appose uniform law. (meter 4629) discussed last session. discussed her interpretation of the bill. I support elements of the bill. Spoke of the "Good Faith" and "Fair Dealings" litagations in other states.

**Sen. Trenbeath** discussed with **Ms. Foss** how "fair dealings" is already part of the law. (meter 5825) discussion. **Sen. Traynor** requested Ms. Foss to submit her amendments that would make this bill acceptable. Att #5a & 5b

**Greg Tschider**, ND Credit Union League (meter 198, tape 2 side 1) Presnted his testimony - Att #4. There is no uniformity because a great majority of the states have not adopted article 1. **Sen. Traynor** asked if other states have done interm studies? **Ms. Foss** responed that they were not aware of any but the American Bankers Assoc has recently contacted and continue to contact people with the problems of this bill.

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2143

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 25, 2005

Tape Number	Side A	Side B	Meter #
1		X	3200 - End
Committee Clerk Signature			

Minutes: Relating to Uniform Law Bill - Trusts

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. Discussion:

**Sen. Traynor** stated that in the past when two parties will not communicate, in the past they have passed a bill with a delayed start date until 1997 - Att #1b

**Sen. Nelson** sited that if we give this a do pass we need to read the entire bill and even the bankers have not read the whole thing. **Sen. Trenbeath** responded that "ooh yes they know what they say they just don't agree with it".

**Sen. Traynor** stated: My thought was if we wanted to consider a delayed effective date on the bill as a "do pass" it would force the parties to come to the table. Read Att #1 showing the history of this being done. I do not have strong feelings about either of these bills but it is important for them to thoroughly review these documents it seem to me the Bar

Association/Bankers Association in opposing the bill has taken the position that they have not

had a chance to educate its members. If they wanted us to do what they are asking we could use the delayed effective date as a device to do that. **Sen. Trenbeath** responded that is first response would be to adopted this suggestion however, while I am disturbed that this bill didn't "appear out of thin air" and they are the results of years of work from some of the top legal minds of the country and myself. To generate this doctrine and the Uniform Laws Commission, puts this forth for consideration and the bar association, who always has a representative on the drafting committees and uniform laws committee when it is finally completed. Our seven people have decided that this is one of the bills/acts that we would promote. There are many bills we do not think would work in North Dakota. This is done by a vote. The bills have been available to these entities since that time and have come to these committees today. What greatly disappoints me is the fact that these two entities; the Bar Association and Bankers Assoc., literally five minutes before we are set to hear the bill, come to me and say they can not support it due to the fact that they did not have time to look them over thoroughly. I find this implicit, frankly. This is an embarrassment to the ND Uniform Law Organization as well as the National Organization. We are being put into the position of going back to the organization and telling them that we introduced four bills and two were defeated in committee. Having said this, I do not think it is good legislative action to adopt these with a late effect date. There may be well thought reasons for not having these adopted in ND. By holding their feet to the fire, that is very tempting, I would like to work something out during the interim. My goal is to keep them as uniform as possible.

**Sen. Nelson** stated that she too served on the interim committee that had that stack of stuff, they have indeed had this for some time. I have not read it due to the fact that I was waiting to see

Page 3

Senate Judiciary Committee

Bill/Resolution Number SB 2143

Hearing Date January 25, 2005

what they were going to come with. Last session we had a uniform trust code. No one has contacted me about it. My concern is that the surrounding states around us have not adopted this yet. Discussed history of bills being passed.

**Sen. Trenbeath** told the committee the complicated process (meter 4600) that goes into the preparation of these.

**Senator Syverson** spoke in support of the delayed effective date.

**Sen. Traynor** stated making a motion on the floor, stating the concerns for the records that a future presentation of this bill will be looked at favorably and should be taken seriously.

**Senator Syverson** wants more then a verbal warning on the floor.

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2143

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 31, 2005

Tape Number	Side A	Side B	Meter #
1		X	720- 1700
Committee Clerk Signature <i>Mona L Solberg</i>			

Minutes: Relating to Uniform Commercial COde General provisions, contracts & leases...

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following committee work:

**Sen. Traynor** introduced a study resolution - Att. #2 in replace of the bill.

**Senator Hacker** made the motion to Do Not Pass SB 2143 and **Senator Syverson** seconded the motion. All were in favor.

Carrier: **Sen. Nelson**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing



Date: 1/31/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2143

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Sen Hacker Seconded By Sen. Syverson

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) \_\_\_\_\_ 6 No \_\_\_\_\_ 0

Absent \_\_\_\_\_ 0

Floor Assignment Sen. Nelson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 31, 2005 1:58 p.m.

**Module No: SR-20-1462**  
**Carrier: Nelson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2143: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2143 was placed on the  
Eleventh order on the calendar.

2005 TESTIMONY

SB 2143

AHH 1



## SUMMARY

### Revised Article 1 of the Uniform Commercial Code

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. Thus, Article 1 contains many changes of a technical, non-substantive nature, such as reordering and renumbering sections, and adding gender neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Perhaps the most important change to Article 1, however, has to do with default choice-of-law provisions found in 1-301, which replaces previous 1-105. Under the Article 1 before the 2001 amendments, parties to a transaction may agree to be governed by the law of any jurisdiction that bears a reasonable relation to that transaction. Revised Article 1 provides a different basic rule that applies except for consumer transactions in certain circumstances.

With respect to all transactions, an agreement by the parties to use the law of any state (or in the case of an international transaction, country) is effective, regardless of whether the transaction bears a reasonable relation to that state. However, if one of the parties to a transaction is a consumer, such a choice-of-law provision in a contract may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or of the state or country where the consumer contracts and takes delivery of goods. Also, with respect to all transactions, an agreement to use the law of a designated state or country is ineffective to the extent that application would violate a fundamental public policy of the state or country which has jurisdiction to adjudicate a dispute arising out of the transaction. The forum state's law will govern the transaction if the contract is silent on the issue of choice of law.

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# Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

## Why States Should Adopt the...

### Revised Uniform Commercial Code Article 1 - General Provisions (2001)

Article 1 serves all other articles of the Uniform Commercial Code with definitions and general provisions. Revised Article 1 improves old Article 1 in the following ways:

- **Modernization.** The UCC has entirely been amended or revised between 1985 and 2003. Most states have enacted these revisions and amendments. It is time to bring Article 1 as up-to-date as the rest of the UCC.
- **Narrower Scope.** The intentionally narrowed scope of the substantive rules in Article 1 prevent them from being applied outside the UCC with potentially serious unintended consequences.
- **Clarifies When Non-UCC Rules Apply.** Other law will clearly supplement, but does not supplant UCC rules. This reduces interpretation problems and the opportunities for litigation.
- **Good Faith.** Reasonable commercial standards will affect the determination of what is good faith in any given case for the entire UCC, not just individual articles. This is a fairer standard for courts to enforce and is the existing standard in most of the substantive articles of the UCC.
- **Broader Choice of Law.** Parties to transactions under the UCC may choose any law that best governs their transaction, except in a consumer transaction in which the choice of law would deprive a consumer of the protections of his or her own state's law. This amendment provides for greater flexibility in doing business interstate and is good for business.
- **Course of Performance Added.** Absent express terms, evidence of "course of performance" (a concept currently utilized only in Articles 2 and 2A of the UCC) may be used in court to interpret a contract along with course of dealing and usage of trade. Courts will have more complete evidence on the meaning of contracts and the intent of the parties to them.
- **Statute of Frauds Deleted.** General writing and signature requirements are deleted to make way for the specific provisions for electronic records and signatures that are contained in the substantive UCC articles.

#### UNIFORMITY

Modifications and revisions of other articles in the Uniform Commercial Code require the revision of Article 1 of the UCC. This required harmonization of Article 1 with the other revised articles as well as the need to reflect in Article 1 recent changes and developments in law are both expressed in Revised Article 1. It is important for every state to adopt Revised Article 1 of the Uniform Commercial Code.

Att #2



## A Few Facts About The...

### REVISED UNIFORM COMMERCIAL CODE ARTICLE 1, GENERAL PROVISIONS (2001)

**PURPOSE:**

Updates the general provisions section of the Uniform Commercial Code, to harmonize with ongoing UCC projects and recent revisions.

**ORIGIN:**

Completed by the Uniform Law Commissioners and the American Law Institute in 2001.

**APPROVED BY:**

American Bar Association

**STATE ADOPTIONS:**

Alabama  
Delaware  
Hawaii  
Idaho  
Minnesota  
Texas  
U.S. Virgin Islands  
Virginia

**2004 INTRODUCTIONS:**

Massachusetts  
West Virginia

For any further information regarding the Revised UCC Article 1, please contact  
John McCabe, Michael Kerr or Katie Robinson at 312-915-0195.

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50286.0101  
Title.

Prepared by the Legislative Council staff for  
Representative Kretschmar  
January 11, 2005

AH #3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2143

Page 27, line 3, replace "Subdivision" with "If House Bill No. 1151 does not become effective, subdivision"

Page 27, line 7, replace "Section" with "If House Bill No. 1151 does not become effective, section"

Renumber accordingly

Att #4

# TESTIMONY IN OPPOSITION OF SENATE BILL NO. 2143

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GREG TSCHIDER, ND CREDIT UNION LEAGUE

Mr. Chairman and Members of the Judiciary Committee, I am Greg Tschider and I represent the North Dakota Credit Union League. The North Dakota Credit Union League is appearing in opposition to SB2143 which is the revised UCC Article 1. As you are aware, Article 1 sets out the "general provisions" used to interpret the balance of the UCC.

Last session, the revised Article 1 was introduced but then withdrawn. The revised Article 1 has not been embraced by many states including such large commerce states such as California, New York, and Illinois. As stated by Ms. Marilyn Foss of the NDBA, the states that have adopted the revised Article 1 did so after major substantive changes. The lack of acceptance by other states has not impeded commerce. Therefore, what is the benefit in North Dakota adopting revised Article 1 when other states have elected to ignore it or make substantive changes?

The present law appears to be effective. What is the problem? What benefits accrue to North Dakota if this bill is adopted?

It is requested that a "Do Not Pass" be accorded this bill.

Thank you.





Handwritten initials "HJ" and a checkmark.

January 17, 2005

Senator John "Jack" Traynor, Chair  
Senate Judiciary Committee

RE: SB 2143 Amendments

Dear Senator Traynor:

Per your specific request, I am enclosing a set of possible amendments to SB 2143. They may appear to be extensive, but I've have tried only to remove changes related to the definition of "good faith" as we discussed in committee hearing and to retain the status quo on that point.

As I noted during the hearing, SB 2143 is improved from the version that was introduced 2003 because it appears to retain the current law for choice of law agreements.<sup>1</sup> Of the few states that have adopted some version of Revised Article 1, none have adopted the changes on choice of law as proposed by NCCUSL. Another area where adopting states are amending Revised Article 1 is regarding the definition of "good faith". I realize there is a divergence of opinion about whether the definition of "good faith" in Revised Article 1 is substantive or intends a change in the substantive law just as there is interest in the changes to the provisions regarding what constitutes "notice" and whether they effect a substantive change. It seems to me that the important thing is that there are differences of opinion and, unarguably, no urgent need to adopt Revised Article 1 at this time. North Dakota can wait without creating any problem for the commercial or banking industry in the state. With so few states adopting Revised Article 1, the law isn't and won't be uniform for quite some time.

I do appreciate the consideration shown to me during the hearing. Thank you.

Sincerely Yours,

A handwritten signature in cursive script that reads "Marilyn Foss".

Marilyn Foss

<sup>1</sup> There is at least one difference, a deletion of a reference to conflict of laws rules. However, the dropped language doesn't appear to be substantive.

5b

## POSSIBLE AMENDMENTS TO SB 2143

- Page 1, line 4, remove "subdivision b of subsection 1 of section 41-02-03,"
- Page 1, line 5, remove "subsection 3 of section 41-02.1-03,"
- Page 1, line 7, replace "subdivisions" with "subdivision" and remove "d and"
- Page 1, line 8 remove "subsection 3 of section 41-04-04, subsection 1 of section 41-04.1-05,"
- Page 1, line 10, remove "subdivision k of subsection 1 of section"
- Page 1, line 11, remove "41-08-02, subdivision ss of subsection 1 of section 41-09-02,"
- Page 6, line 8, remove "and the observance of reasonable commercial standards of fair"
- Page 6, line 9, remove "dealing"
- Page 18, line 10, remove "and the observance of reasonable commercial standards of fair"
- Page 18, line 11, remove "dealing"
- Page 21, remove lines 1 through 5
- Page 21, line 6, replace "6." with "5."
- Page 21, remove lines 10 through 30
- Page 22, line 1, replace "8." with "6."
- Page 22, line 6, replace "9." with "7."
- Page 22, line 21, replace "10." with "8."
- Page 23, line 4, replace "11." with "9."
- Page 23, line 19, replace "12." with "10."
- Page 24, line 8, replace "13." with "11." and replace "Subdivisions" with "Subdivision" and remove "d and"
- Page 24, line 9 replace "are" with "is"
- Page 24, remove lines 14 through 31
- Page 25, remove lines 1 through 3
- Page 25, line 4, replace "15." with "12."
- Page 25, line 27, remove the overstrike over "~~Good Faith~~ means honesty in fact and the observance of reasonable"
- Page 25, line 28, remove the overstrike over "~~commercial standards of fair dealing.~~" and remove "(Reserved)."
- Page 26, line 1, replace "16." with "13."
- Page 26, line 16, replace "17." with "14."
- Page 26, line 22, replace "18." with "15."
- Page 27, line 3, replace "19." with "16."
- Page 27, line 7, replace "20." with "17."
- Page 27, remove lines 14 through 23
- Page 27, line 24, replace "23." with "18."
- Page 27, line 30, replace "24." with "19."

Renumber accordingly



Bob Stenehjem  
State Senator  
Chairman

JOHN D. OLSRUD  
Director

JAY E. BURINGRUD  
Assistant Director

JIM W. SMITH  
Legislative Budget  
Analyst & Auditor

JOHN WALSTAD  
Code Revisor

## North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

January 20, 2005

Honorable John T. Traynor  
State Senator  
Senate Chamber  
State Capitol  
Bismarck, ND 58505

Dear Senator Traynor:

This letter is in response to your request for information as to major uniform Acts that the Legislative Assembly has passed with delayed effective dates. We searched the files going back to 1965 and discovered these uniform Acts with delayed effective dates:

1. In 1965 the Legislative Assembly enacted Senate Bill No. 60, the Uniform Commercial Code, with a delayed effective date of July 1, 1966.
2. In 1973 the Legislative Assembly enacted House Bill No. 1040, the Uniform Probate Code, with a delayed effective date of July 1, 1975.
3. In 1991 the Legislative Assembly enacted Senate Bill No. 2100, Uniform Commercial Code Articles 2A, 3, 4, and 4A, with a delayed effective date of July 1, 1993.
4. In 1991 the Legislative Assembly enacted House Bill No. 1101, the Uniform Foreign-money Claims Act, with a delayed effective date of January 1, 1992.
5. In 1993 the Legislative Assembly enacted House Bill No. 1111, Uniform Probate Code Revised Article II, with a delayed effective date of August 1, 1995.
6. In 1995 the Legislative Assembly enacted House Bill No. 1110, the Uniform Partnership Act (1994), with a delayed effective date of January 1, 1996.
7. In 1995 the Legislative Assembly enacted House Bill No. 1111, Uniform Probate Code Revised Article III, with a delayed effective date of January 1, 1996.

In addition to uniform Acts with delayed effective dates, the Legislative Assembly enacts several bills during each legislative session with delayed effective dates. For example, in 2003 the Legislative Assembly enacted two bills with an effective date of January 1, 2004; one bill with an effective date of April 1, 2004; one bill with an effective date of July 1, 2004; one bill with an effective date of

January 1, 2005; six bills with an effective date of July 1, 2005; one bill with an effective date of August 1, 2005; two bills with an effective date of January 1, 2006; and two bills with an effective date of July 1, 2006.

Please contact this office if you have any questions.

Sincerely,



Jay E. Buringrud  
Assistant Director

JEB/AAV

HH 1b

PROPOSED AMENDMENTS TO SENATE BILL NO. 2143

Page 1, line 12, remove the second "and"

Page 1, line 14, after "leases" insert "; and to provide an effective date"

Page 27, after line 31, insert:

**"SECTION 25. EFFECTIVE DATE.** This Act becomes effective on August 1,  
2007."

Renumber accordingly

Fifty-ninth  
Legislative Assembly  
of North Dakota

**SENATE CONCURRENT RESOLUTION NO.**

AH #2

Introduced by

Judiciary Committee

1 A concurrent resolution directing the Legislative Council to study the feasibility and desirability  
2 of adopting Revised Article 1 of the Uniform Commercial Code, General Provisions.

3 **WHEREAS**, the Uniform Commercial Code governs commercial transactions, including  
4 sales and leasing of goods, transfer of funds, commercial paper, bank deposits and collections,  
5 letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and  
6 secured transactions; and

7 **WHEREAS**, the purpose of the Uniform Commercial Code is to establish a uniform set  
8 of rules to govern commercial transactions, which are often conducted across state lines; and

9 **WHEREAS**, since adoption of the Uniform Commercial Code in 1965, changes and  
10 developments in commercial law have resulted in revision of the entire Uniform Commercial  
11 Code between 1985 and 2003; and

12 **WHEREAS**, the Revised Article 1 clarifies when the Uniform Commercial Code is to  
13 apply to commercial transactions, allows parties to determine which laws best govern their  
14 transactions and thus promotes interstate business transactions, and promotes continued use  
15 and development of electronic transactions; and

16 **WHEREAS**, Minnesota, to which much of the commerce of this state flows, enacted  
17 Revised Article 1 in 2004; and

18 **WHEREAS**, the version of Article 1 introduced in North Dakota as Senate Bill No. 2143  
19 (2005) was modeled on Article 1 as enacted in Minnesota; and

20 **WHEREAS**, continued economic development in this state depends on up-to-date  
21 commercial law and states outside the mainstream of advances in commercial law will be at a  
22 competitive disadvantage in attracting and maintaining commerce and industry; and

23 **WHEREAS**, the North Dakota Bankers Association and North Dakota Credit Union  
24 League opposed harmonizing the various articles of the Uniform Commercial Code through  
25 Revised Article 1; and

1       **WHEREAS**, an interim study of Revised Article 1 would provide opponents of  
2 harmonization of the various articles of the Uniform Commercial Code an opportunity to identify  
3 those provisions that should be unique to North Dakota;

4       **NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE**  
5 **HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

6       That the Legislative Council study the feasibility and desirability of adopting Revised  
7 Article 1, of the Uniform Commercial Code, General Provisions; and

8       **BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and  
9 recommendations, together with any legislation required to implement the recommendations, to  
10 the Sixtieth Legislative Assembly.